



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,361	03/09/2004	Patrick L. Dean SR.	124903.0001.000	2262

7590 01/04/2005

Mark A. Tidwell
Jackson Walker L.L.P.
Suite 2100
112 E. Pecan Street
San Antonio, TX 78205-1521

EXAMINER

GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
----------	--------------

3612

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,361

Applicant(s)

DEAN ET AL.

Examiner

Stephen Gordon

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 2-25, 32-34, 36-37, and 40-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 2, lines 2 and 3 are somewhat confusing. If “said tubes” in line 2 and “one another” in line 3 were replaced with –said first tubes—and –respective ones of said second tubes—respectively, the claim would be clear in this regard.

Re claim 3, in as much as the locking leg does not define a perpendicular shaft as such, the claim is confusing. If “each leg” in line 1 and “said leg” in line 2 were replaced with –each parallel leg—and –said parallel leg—respectively, the claim would be clear in this regard as best understood.

Re claim 8, “said leg” and “each leg” lack clear antecedent basis – do these refer to the locking leg or parallel legs or both? See discussion regarding claim 3 above.

Re claim 9, “said leg” in line 2 lacks clear antecedent basis and could be written as –said respective leg—for clarity.

Re claim 11, “said leg” in line 2 lacks clear antecedent basis and could be written as –said respective leg—for clarity.

Re claim 12, “the adjustment elements of the shaft of said leg” lacks antecedent basis.

Re claim 13, “said adjustment elements” lacks clear antecedent basis – does this refer to the adjustment elements of the shaft, the cross member, or both?

Art Unit: 3612

Re claim 14, "said adjustment elements" lacks clear antecedent basis – does this refer to the adjustment elements of the shaft, the cross member, or both?

Re claim 15, "said adjustment... elements" lacks clear antecedent basis. Note also similar terms in claims 17 and 18.

Re claim 19, the claimed configuration appears to be inconsistent with the configuration disclosed. Additionally, line 1 is slightly confusing. As best understood, "a first tube of a parallel leg" could be replaced with –the first tube of one of said legs—to clarify the claim. Applicant should take care in amending claim 19 to study the effect on dependent claims 20-22, 24 and 25 such that the recitations remain clear and consistent with the instant device as disclosed.

Re claim 23, "parallel" in line 2 should apparently be –locking—for consistency with the device as described in the specification. Note also "said parallel leg" lacks antecedent basis.

Re claim 32, "said leg" in line 2 lacks clear antecedent basis and could be written as –said locking leg—for clarity.

Re claim 35, "said adjustment elements" lacks clear antecedent basis.

Re claim 36, "said adjustment elements" lacks clear antecedent basis.

Re claims 40-42, the exact scope of these claims is unclear as claim 40 is rendered incomplete by dependence from itself.

Re claim 45, lines 2 and 3 are somewhat confusing. If "said tubes" in line 3 and "one another" in line 3 were replaced with –said first tubes—and –respective ones of said second tubes—respectively, the claim would be clear in this regard.

Art Unit: 3612

Additionally, lines 4-6 are somewhat confusing. If “telescoping leg” on line 4 and “a telescoping leg” on line 6 were replaced with —one of said telescoping legs— and —another one of said telescoping legs—respectively, the claim would be clear in this regard. In line 7, “said legs” lacks clear antecedent basis and could be written as —said another ones of said legs—(note “ones” in this term is plural to account for the “another leg” at each end of the cross member). Finally, the last line is somewhat confusing, and “a leg” could be replaced with —one of said legs—to clarify the claim in this regard as best understood.

Re claim 46, “said leg” in line 1 lacks clear antecedent basis.

Re claim 52, “said leg” in line 2 lacks clear antecedent basis and could be written as —said at least one of said legs—for clarity.

Re claim 55, lines 2 and 3 are somewhat confusing. If “said tubes” in line 3 and “one another” in line 3 were replaced with —said first tubes—and —respective ones of said second tubes—respectively, the claim would be clear in this regard. Additionally, lines 4-6 are somewhat confusing. If “telescoping leg” on line 4 and “a telescoping leg” on line 6 were replaced with —one of said telescoping legs— and —another one of said telescoping legs—respectively, the claim would be clear in this regard. On line 7, “said legs” lacks clear antecedent basis and could be written as —said another ones of said legs—(note “ones” in this term is plural to account for the “another leg” at each end of the cross member). Finally, the last line is somewhat confusing, and “a leg” could be replaced with —one of said legs—to clarify the claim in this regard as best understood.

Art Unit: 3612

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 45-47, 49, and 53-55, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Bowman.

Re claims 45 and 55, Bowman teaches a cargo restraining brace including three telescoping legs 22, 24, 26 which define a first tube inside second tubes 34, 36, 38 which allow for telescopic adjustment. The device includes a first cross member 14 wherein leg 24, 36 is perpendicularly attached between ends of the cross member. Additionally, legs 22, 34, and 26, 38 are attached perpendicularly to the cross member at its ends as broadly claimed. The end attached legs are parallel to each other. Finally, elements 40, 42, 44 define a locking mechanism as broadly claimed.

Re claims 46 and 47- note adjustment elements 42 as broadly claimed.

Re claims 53 and 54 - note second selectively adjustable cross member 12.

Re claim 49, at least the threads (54) on element 52 or the threads on element 58 are deemed to define a plurality of adjustment elements along a length portion as broadly claimed.

4. Claims 1, 26-29, 31-32, 35, and 39, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Moses.

Art Unit: 3612

Moses teaches a restraining brace (figure 3) which could be used to restrain cargo including a fork shaped portion with two parallel legs 70 and a cross member 64, and a locking portion 50, 52+ extending from the cross member in a direction opposite the parallel legs.

Re claim 1, the locking portion defines a telescoping locking leg 50, 52 and includes an adjustment mechanism 54, 56+.

Re claim 26, tubes 50, 52 are nested.

Re claim 27, the locking leg is positioned as claimed.

Re claims 28 and 29, see adjustment elements/apertures 54 on element first tube 50.

Re claim 31, bolts 56 in tubes 52 and 50 (see figures 2 and 3) also define adjustment elements as broadly claimed. Moreover, the bolts include "threads" which read on the recited threads as broadly claimed.

Re claim 32, see foot 60.

Re claim 35, at least nuts 58 define a locking mechanism as broadly claimed.

Re claim 39, at least elements 80+ define attachment anchors as broadly claimed.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3612

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 30 and 37, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Moses in view of Bishop.

Re claim 30, Moses teaches all of the claimed features as discussed above regarding claim 28 in the section 102 rejection but teaches that the adjustment elements are apertures. The reference fails to specifically teach that the adjustment elements can be teeth.

Re claim 37, Moses teaches all of the claimed features as discussed above regarding claim 26 in the section 102 rejection but teaches adjustments elements comprising an aperture/bolt assembly (54, 56). Moses fails to specifically teach adjustment elements defining teeth and an engaging ratchet.

Bishop teaches and adjusting assembly for a telescopic leg including a rack with teeth adjustment elements and an associated adjustment handle mechanism 19 including an engaging ratchet 22+ as broadly claimed.

Art Unit: 3612

In order to provide for finer and/or quicker adjustment, it would have been obvious to one of ordinary skill in the art to replace the aperture/bolt adjustment assembly of Moses with a rack/ratchet handle adjustment assembly in view of the teachings of Bishop.

8. Claim 36, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Moses.

Re claim 36, Moses teaches all of the claimed features as discussed above regarding claim 26 in the section 102 rejection and further teaches aperture adjustment elements 54. Moses further teaches pins (bolt assemblies 56+) in the apertures but fails to specifically teach that the pins can be spring loaded type pins.

Spring loaded pins per se are notoriously well known in the art and are used for quick engagement/disengagement of locking apertures.

In order to provide for quicker changing of the lock setting of the telescopic leg, it would have been obvious to one of ordinary skill in the art to replace the nut/bolt assemblies 56 of Moses with spring loaded pins in view of known art practices.

9. Claims 48 and 51, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman in view of Bishop.

Re claims 48 and 51, Bowman teaches all of the claimed features as discussed above regarding claim 46 in the section 102 rejection but teaches that the adjustment elements

Art Unit: 3612

are apertures with mating pins. The reference fails to teach that the adjustment elements can be teeth. Re claim 51, the reference further fails to teach a ratchet engaging the teeth.

Bishop teaches an adjusting assembly for a telescopic leg including a rack with teeth adjustment elements and an associated adjustment handle mechanism 19 including an engaging ratchet 22+ as broadly claimed.

In order to provide for finer and/or quicker adjustment, it would have been obvious to one of ordinary skill in the art to replace the aperture/pin adjustment assembly of Bowman with a rack/ratchet handle adjustment assembly in view of the teachings of Bishop.

10. Claim 50, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman.

Re claim 50, Bowman teaches all of the claimed features as discussed above regarding claim 46 in the section 102 rejection and further teaches aperture 42+ and pin 40 adjustment elements.

Bowman appears to teach the use of smooth sided round shank pins and fails to specifically teach that the pins are spring loaded.

Spring loaded pins per se are notoriously well known in the art and provide for more positive locking over conventional smooth sided pins.

Art Unit: 3612

In order to provide for more secure locking, it would have been obvious to one of ordinary skill in the art to utilize spring loaded pins for the aperture engaging lock pins of Bowman in view of known art practices.

11. Claim 52, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman in view of Oliviero.

Re claim 52, Bowman teaches all of the claimed features as discussed above regarding claim 45 in the section 102 rejection and further teaches adjustment elements for a telescopic locking leg which utilizes pins in apertures 42+.

The reference fails to teach that the adjustment assembly includes a biasing mechanism to urge the leg out.

Oliviero teaches an adjusting assembly for a telescopic leg including a rack with teeth adjustment elements and an associated ratcheted handle pawl assembly which includes a biasing member (spring 58) for urging a leg outward as broadly claimed.

In order to provide for finer and/or quicker adjustment, it would have been obvious to one of ordinary skill in the art to replace the aperture/pin adjustment assembly of Bowman with a rack adjustment assembly including a spring biasing member which urges the locking leg out in view of the teachings of Oliviero.

12. Claim 38, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Moses in view of Oliviero.

Art Unit: 3612

Re claim 38, Moses teaches all of the claimed features as discussed above regarding claim 1 in the section 102 rejection and further teaches use of a bolt/aperture 54+ adjusting system for the locking leg.

The reference fails to teach that the adjustment system includes a biasing mechanism to urge one of the legs outward.

Oliviero teaches an adjusting assembly for a telescopic leg including a rack with teeth adjustment elements and an associated ratcheted handle pawl assembly which includes a biasing member (spring 58) for urging a leg outward as broadly claimed.

In order to provide for finer and/or quicker adjustment, it would have been obvious to one of ordinary skill in the art to replace the aperture/bolt adjustment assembly of Moses with a rack adjustment assembly including a spring biasing member which urges the locking leg out in view of the teachings of Oliviero.

13. The failure to apply the prior art to claims 40-42 should not be construed as an indication of allowable subject matter. Because these claims so seriously fail to meet the requirements of 35 USC 112 – second paragraph for the reasons stated above, it is not possible to apply the prior art to the claims in deciding patentability without disregarding portions of the express wording of claims and thus resorting to speculation and conjecture as to the particular invention defined therein. See Ex parte Lyell, 17 USPQ2d 1548, 1552.

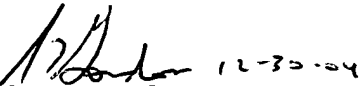
Art Unit: 3612

14. Claims 2-25, 33-34, and 43-44 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note at least House teaches a cargo brace for a truck bed including telescoping leg portions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen Gordon
Primary Examiner
Art Unit 3612

stg